

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION: 6
HON. THOMAS B. LINDBERG
CASE NO. P1300CR20081339

JEANNE HICKS, CLERK
By: Lilly Miller, Deputy Clerk
DATE: April 13, 2010 wlo

FILED
DATE: April 13, 2010
4:57 O'Clock P.M.
JEANNE HICKS, CLERK
BY: Lilly Miller
Deputy

TITLE:

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

COUNSEL:

Yavapai County Attorney (e)
Joseph Butner / Jeffrey Paupore
(For Plaintiff)

John Sears (e)
and
Larry Hammond / Anne Chapman
OSBORN MALEDON, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, AZ 85012
(For Defendant)

HEARING ON: NATURE OF PROCEEDINGS

Pending Motions / Jury Selection

COURT REPORTER

Roxanne Tarn

START TIME: 9:32 a.m.

APPEARANCES: Joseph Butner, Co-Counsel for the State
Jeffrey Paupore, Co-Counsel for the State
Steven DeMocker, Defendant (in custody)
John Sears, Co-Counsel for Defendant
Larry Hammond, Co-Counsel for Defendant
Anne Chapman, Co-Counsel for Defendant

The Defendant and Counsel are present, with the exception of Counsel Paupore. The Court discusses what jurors it has already excused and notes that it has given Counsel some information regarding other jurors that need to be discussed this afternoon.

Counsel Sears advises the Court that the defense is prepared to argue Defendant's motion to preclude late disclosed evidence, reconstruction and opinions from the State's 50th - 54th supplemental disclosures. Counsel Sears would also like to address the Court regarding issues with the Defendant's grooming and appearance.

The Court notes that it received an email from Counsel DuPont that had indicated he would accept service of a subpoena for Katherine Democker. Counsel Butner confirms that he received that email and notes that Counsel DuPont had also indicated that he would accept service for Charlotte Democker. Counsel Butner will finalize those travel arrangements with the people in his office. Counsel Butner has not received an update from Sorenson.

Counsel Chapman and Counsel Butner present argument on the motion to preclude late disclosed evidence, reconstruction and opinions from the State's 50th - 54th supplemental disclosures, part 1 - Sgt. Dan Winslow

April 13, 2010

Page 2

reconstruction and shoe print comparison.

The Court precludes Sgt. Winslow from testifying as to the pattern of the shoe unless he had a recollection of that pattern without relying on photographs to refresh his memory. As Sgt. Winslow cannot testify as an expert, he is precluded from testifying about what particular shoe made the imprint. The Court notes that Sgt. Winslow's measurements may be subject to a foundational objection, but they will not be precluded on a disclosure basis.

Counsel Chapman and Counsel Butner present argument on the motion to preclude late disclosed evidence, reconstruction and opinions from the State's 50th – 54th supplemental disclosures, part 2 - Commander Mascher report on shoe print comparison.

The Court precludes Commander Mascher from testifying as to pattern of shoe or brand of shoe, as he is not a shoe print expert; however, Cmdr. Mascher may testify as to the tracking information that he has gathered.

Counsel Chapman and Counsel Butner present argument on the motion to preclude late disclosed evidence, reconstruction and opinions from the State's 50th – 54th supplemental disclosures, part 3 - DPS computer forensic examinations. Counsel Butner urges the Court to reconsider its previous ruling with regard to the Jennifer Rinzuski email. The Court's previous ruling with regard to that email stands, as the Court does not find that information relevant.

With regard to the DPS computer forensic examinations, the Court declines to preclude the evaluation of why the computer may or may not have turned itself on, the computer searches regarding how to make a suicide look like an accident, as well as the information that was presented at prior hearings. A preclusion order is appropriate, however, for those items that do not pertain to what was previously presented by the State. The Court **ORDERS** the State to identify which documents it intends to introduce from those DPS reports and emails no later than **Monday, April 19, 2010**.

Counsel Chapman and Counsel Butner present argument on the motion to preclude late disclosed evidence, reconstruction and opinions from the State's 50th – 54th supplemental disclosures, part 4 - La Sportiva sample shoe information.

The Court believes that the Defendant's experts are entitled to examine the sample shoes and the Defense is entitled to ask that those be released to them, under stipulations with regard to their return. For the reasons as stated on the record, the portion of the motion regarding precluding La Sportiva sample shoe information is **DENIED**.

Counsel Chapman and Counsel Butner present argument on the motion to preclude late disclosed evidence, reconstruction and opinions from the State's 50th – 54th supplemental disclosures, part 5 - jail visit recordings.

With respect to the jail recordings, the Court ratifies the order previously entered. Although the Court believes that the State has not fully complied with Rule 15.1 by specifically identifying which statements it intends to use, the Court will potentially allow the State to use those statements that it has identified by date or portion of the CD with some specificity within the deadlines set by the Court. The Court will preclude recordings that do not comply with the Court's previous orders. With regard to the statements that were timely disclosed by the

April 13, 2010

Page 3

State, the Court **ORDERS** the State to specifically identify which recordings they intend to rely upon by **Tuesday, April 20, 2010**. Counsel for State shall advise the Defense of the specific supplement in which the jail visit statements appear. The Court directs the State to disclose any additional jail recording statements it intends to use within 3 days of when the recording is made or as soon as the State learns of them during the trial. Court directs all to return at 1:15 p.m. The Court stands at recess.

~ ~ ~ ~ ~ Recess 12:19 p.m. ~ ~ ~ ~ ~

At 1:22 p.m., Court reconvenes with Defendant and Counsel previously announced, with the addition of Counsel Paupore. The Court has been advised that potential juror Ms. Smith is present.

At 1:24 p.m., Suzanna Smith, juror #250670, enters and is questioned by Court and Counsel on *voir dire*. Ms. Smith is excused for cause. At 1:35 p.m., Ms. Smith exits the Courtroom.

Discussion ensues regarding the excused juror and the Court's admonition.

Court and Counsel discuss the Defendant's and State's proposed lists of jurors to be excused for hardship. Counsel agree to strike jurors #826, 078, 767, 119, 469, 338, 367, 945, 134, 575, 898, 292, 453, 704, 391, 509, 010, 218, 604, 195, 459, 695, 473, 388, 788, 439, 499, 877, 931, 212, 433, 759, 998, 096, 249, 948, and 385. There being no objection, the Court will **ORDER** the Jury Commissioner to strike those jurors for hardship. Counsel for State requests a jury list that includes names as well as numbers from the Jury Commissioner. The Court will **ORDER** the Jury Commissioner to submit to the Court an alphabetical juror list, omitting the jurors that have been stricken.

Discussion ensues regarding the remaining jurors which the State did not initially agree to strike from the Defendant's hardship list. The Parties further agree to strike jurors #763, 898, 775, 940, 933, 333, 489. Court excuses juror #269 for hardship.

Counsel Sears discusses Defendant's proposed list of jurors that are ready to be questioned further and the list of jurors Defendant proposes to strike for cause. Counsel Butner and Counsel Sears further discuss the jury selection process and excusing jurors for cause. The Court directs the Parties to review their respective cause lists during the recess to see which jurors they can agree on striking. The Court stands at recess.

~ ~ ~ ~ ~ Recess 2:49 p.m. ~ ~ ~ ~ ~

At 3:09 p.m., Court reconvenes with Defendant and Counsel previously announced. Further discussion ensues regarding the proposed lists of jurors to strike for cause. Counsel for State does not have a list of jurors that includes names; they only have a list with numbers. Counsel Sears has a list of jurors that includes their names and numbers, which was prepared by their jury consultant.

The Court **ORDERS** the State to provide a copy of the State's cause list to the Defense. Defense Counsel can provide the State with their cause list as soon as they contact their jury consultant.

Juror #254462 is excused for hardship by the Court.

April 13, 2010

Page 4

The Court **ORDERS** that the Parties meet and exchange lists of jurors to strike for cause in order to make a determination regarding cause strikes that are acceptable to both sides and present that list to the Court by the next hearing, which is **April 20, 2010 at 1:30 p.m.**

Counsel Sears discusses his proposal for giving potential jurors a parting admonition after the *voir dire*. The Court will direct the Jury Commission to refrain from excusing those jurors for hardship until the Court and Parties have agreed on a parting admonition.

Counsel Chapman presents further argument on the LaSportiva sample shoe issue and asks that the State provide those exemplar shoes to Defense expert immediately. Counsel Butner is willing to comply with that request, but is unsure how quickly the shoes can be provided to the Defense expert, as one pair of shoes is with the FBI expert. The Court clarifies that both sides need to enter a stipulation with regard to a chain of custody for the shoes. If such a stipulation is entered, the Court would direct that all of the sample shoes be provided to the Defense expert.

Counsel Chapman and Counsel Butner present further argument on the motion to preclude late disclosed evidence, reconstruction and opinions from the State's 50th – 54th supplemental disclosures, part 5 - jail visit recordings.

The Court **ORDERS** confirming its previous order with regard to any statements that were not timely disclosed in accordance with the Court's previous order. With regard to the February matter, the Court will confirm that the Court's previous orders with regard to the disclosure of those be accomplished as directed in the Court's order entered this morning. That order applies both to jail visit recordings as well as jail phone call recordings that have taken place since the cut-off dates the Court established for disclosure.

Counsel Chapman and Counsel Butner present argument on the Defendant's motion to preclude late disclosed evidence, reconstruction and opinions from the State's 50th – 54th supplemental disclosures, part 6 - Sorenson forensic testing.

The Court **DENIES** the request to preclude the Sorenson forensic testing at this time, without prejudice. The Court directs the State to disclose the identities of the 4 individuals and disclose that information to the Defense no later than **Tuesday, April 20, 2010.**

Counsel Chapman and Counsel Butner present argument on Defendant's motion to preclude late disclosed evidence, reconstruction and opinions from the State's 50th – 54th supplemental disclosures, part 7 – FIA Card Services and part 9 – Provident Funding documents.

With regard to the motion to preclude FIA Card Services, the Court **DENIES** the motion with regard to exclusion of particular records that may have to do with the golf club. The Court will likely limit the State's use on relevancy grounds of other records from FIA Card Services. With regard to Provident Funding, the Court **DENIES** the motion to preclude the records as they relate to the mortgage level on the Bridal Path property. Counsel Chapman requests that the State identify the particular FIA records that relate to the golf club. Counsel Butner can accommodate that request. The Court directs that the State identify the FIA records that relate to the golf club no later no later than **Tuesday, April 20, 2010.**

April 13, 2010

Page 5

Counsel Chapman and Counsel Butner present argument on Defendant's motion to preclude late disclosed evidence, reconstruction and opinions from the State's 50th – 54th supplemental disclosures, part 8 – phone records.

The Court **DENIES** the motion to preclude the phone records but reserves the right to enter appropriate rulings on any specific objections to the phone records raised during trial.

Counsel Chapman and Counsel Butner present argument on Defendant's motion to preclude late disclosed evidence, reconstruction and opinions from the State's 50th – 54th supplemental disclosures, part 10 – purchases from February 2008 and new witness.

The Court **DENIES** the motion to preclude the information about purchases from February 2008; however, if the records are as Defense indicates, there may be hearsay and relevance objections if they were from February 2007 and not February 2008. The Court reserves the right to enter appropriate rulings to specific objections raised during trial.

Counsel Chapman advises the Court that the Defense filed another motion this morning with respect to the 55th through the 57th and with respect to the State's late-disclosed witnesses. The Defense also filed a motion regarding the DNA evidence and the impression evidence. Counsel Chapman requests additional time to argue those motions.

The Court discusses its calendar and notes that there is also a pending motion for voluntariness hearing, which was filed by the State yesterday. The Court intends to set the matter for a voluntariness hearing. Discussion ensues regarding the Court's calendar. The Court will attempt to rearrange its calendar in order to have a voluntariness hearing in this matter on April 28, 2010.

Counsel Hammond discusses the motion that was filed today with respect to DNA expert testimony, which may require oral argument or testimony. Counsel Hammond advises that the Defense has 2 other motions that have not been filed yet, including a motion regarding the F5 aggravator. Counsel Butner does not object to the Defense filing that motion after the deadline.

The Court authorizes the Defense to file their F5 motion no later than **Monday, April 19, 2010**.

Additionally, Counsel Hammond wishes to file a motion in reference to the State's request to remove the Court under Rule 10, which can be filed Monday as well. Counsel Butner objects to the timeliness of that motion.

The Court will not preclude such a motion from being filed. The Court will refrain from making a decision on that and leaves it to the State to file any objections it may have if and when the motion is filed. Depending on the nature of the motion, the Court may need to have another Judge rule on that motion.

Counsel Hammond gives a hand-written list of jurors to excuse for cause to the State. Counsel Sears reiterates that he anticipates being able to get a computer-generated list of juror numbers and names from his jury consultant shortly. Counsel Butner further discusses the issue with the juror lists not including juror names. Counsel Hammond discusses the work that his office did to compile the juror lists from the questionnaires.

April 13, 2010

Page 6

Counsel Sears advises the Court that he has a rough draft of a proposed parting admonition. The Bailiff is directed to make copies of the proposed parting admonition for all Parties and the Court.

Counsel Sears addresses the Court regarding issues with the Defendant's inability to shave on a daily basis. The YCSO Detention Officer advises the Court that during trial, the Defendant will be allowed to shave on a daily basis, but the Defendant must advise YCSO staff of that need.

In order to prevent issues with jurors or the media, Counsel Sears requests that the Defendant be allowed to dress for trial days at the jail facility before being brought down to the Courthouse, that he not be transported to the Courthouse in an orange jumpsuit or in shackles, and that he be transported back to the jail in the same manner.

The Court discusses the request and the security issues involved in transport, but the Court declines to intervene with respect to YCSO security measures. To the extent that it can be accommodated by YCSO detention staff, the Court requests that the Defendant be dressed in civilian clothing, with appropriate restraints as may be necessary, at the jail facility prior to being transported to the Courthouse for trial. Although the Court is unable to control what the media covers, the Court will continue to admonish the jury not to view media about the case.

Counsel Sears requests that the Defendant not be required to wear a leg brace during trial and presents argument.

The Court **DENIES** the request to remove the Defendant's leg brace during trial.

The Court confirms the next hearing on **April 20, 2010, at 1:30 p.m.**

Court and Counsel discuss the issue regarding the Defendant being handcuffed while participating in video conferences. Counsel Butner is directed to speak to Mr. Fields about that issue and to advise Defense Counsel of the status of that issue tomorrow.

Court and Counsel discuss Defense Counsel's proposed parting admonition. The Court will review and revise the draft of the parting admonition pursuant to their conversation and will communicate that information to the Jury Commissioner.

END TIME: 4:57 p.m.

cc: Division 6
Victim Services (e)
Dean Trebesch (Contract Administrator, PD) (e)
YCSO - Detention (e)
Christopher DuPont, Trautman DuPont PLC, 245 W. Roosevelt, Ste. A, Phoenix, AZ 85003, Counsel for Victims
Charlotte and Katherine DeMocker
John Napper (e) - Counsel for Renee Girard, witness
Jury Commissioner